IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 222 of 2001

with

CRIMINAL APPEAL No 691 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVIN @ PAVO MANABHAI PARMAR
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 222 of 2001
MR JM BUDDHBHATTI for Petitioner No. 1
THROUGH JAIL for Petitioner No. 1
MR PR ABICHANDANI ADDL PUBLIC PROSECUTOR for Respondent No. 1
2. Criminal Appeal No. 691 of 2001
MR JM BUDDHBHATTI for Petitioner No. 1
MR PR ABICHANDANI ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/10/2002

COMMON ORAL JUDGEMENT

#. These Appeals arise out of the judgment and order rendered by the Additional City Sessions Judge, Court No.13, Ahmedabad in Sessions Case No.300 / 2000 acquitting the appellants of the offences punishable under Section 143, 148 304[2] of IPC and Section 135[1] of the B.P.Act. The appellants were sentenced to undergo R.I. for six months and to pay fine of Rs.500/- in default S.I. for two months for the offence under Section 143 of IPC. They were sentenced to undergo R.I. for two years and find of Rs.1000/- in default S.I. for three months for the offence under Section 148 of IPC. They are sentenced to undergo R.I. for seven years and fine of Rs.2000/- in default S.I. for six months for offence under Section 304[2] of IPC and to undergo R.I. for two months and find of Rs.100/- in default for 15 days for offence punishable under Section 135 of Bombay Police Act. The City Sessions Court has also directed that fine if paid b the accused, sum of Rs.10,000/- be paid to the family of the deceased Ramchandra by way of compensation. The judgment and order was rendered on January 8, 2001. The convicts therefore preferred this appeal.

#. The facts of the prosecution case in brief can be stated thus;

The appellants were accused Nos.1 & 2 before the Sessions Court in Sessions Case No.300/2000. They were tried for the offences punishable under Sections 143, 147, 148, 149, 302, 323 red with Section 120-B of IPC and under Section 135[1] of B.P.Act along with four other accused persons who are not before this Court. As per the prosecution case, about five to seven days prior to April 10, 2000, one Sanjay @ Gamo Ramkhilavan Yadav had quarrel with son of Ramchandra Sarjuprasad Jadav and therefore, he was admonished. As a result of the said incident, the accused Nos.5 & 6 conspired to do away with Ramchandra and they formed unlawful assembly on 10th April, 2000 with other accused persons. They were armed with deadly weapons like hockey, sticks, sword, knives etc and while Ramchandra was going on his bycycle, the accused Nos.1 to 5 inflicted various injuries with hockey, sword and knives. He succumbed to the injuries on 11th April, 2000 in hospital at 7.10 a.m.. Before his demise, he had lodged a complaint. Offence was registered on the basis of the complaint and

investigation made. Having found sufficient evidence, chargesheet was filed. Case was committed to the Court of Sessions and the Sessions Court after considering the evidence led by the prosecution came to the conclusion that prosecution could not establish the charges against accused No.6 - Sanjay @ Gamo Ramkhilavan Yadav and therefore recorded acquittal. The Court, however, convicted the accused Nos.1 to 5, out of them, the accused Nos.1 & 2 are appellants before this Court.

#. Learned advocate Mr.Buddhabhatti appearing for the appellants raised various contentions before this Court. He, however, submitted that at the time of conviction both the appellants were under 21 years of age and the trial court therefore ought to have been given benefit of provisions of Probation of Offenders Act, which has not been given. He also submitted that the appellants do not seriously contest or assail conviction but they pray for benefit of provisions of Probation of Offenders Act. He has drawn the attention of this Court to the provisions contained in Section 6 and 11 of the Probation of Offenders Act which made it mandatory for the Court to grant benefits of provisions of Section 4 of the said Act, if the accused-convict is under 21 years of age. In the event, if the Court is not inclined to grant the benefit, special reasons are required to be recorded by the Court. He submitted that the trial court has not considered this aspect. Mr.Buddhabhatti submitted that this exercise can be undertaken by this Court in light of the provisions contained in Section 11 of the said Act.

#. Following the said submission, without examining the merits of the case, the Court called for a report of the Chief Probation Officer, Ahmedabad. The reports are received. The Chief Probation Officer, Ahmedabad has himself made a report and has also annexed the reports received from the Chief Probation Officer, Junagadh as the accused are in Junagadh prison. He has also annexed along with his report a report received from the police authority on question of antecedence of the accused convict.

#. This Court has gone through the Reports of the Probation Officers and finds that both the accused convicts persons were under 21 years of age at the time of conviction. This fact emerges even from the record and proceeding. The report indicates that there are no criminal antecedents of any of the accused. They had fallen in bad company and they have shown notable improvement in their conduct during the period of imprisonment and because of their good conduct, a lighter

work is given to them by prison authority. Both the Chief Probation Officers have recommended for grant of benefit of the provisions of Probation Offenders Act.

#. Section 6 of the Probation of Offenders Act, 1958 runs as under :-

"6. Restrictions on imprisonment of offenders under twenty one years of age - [1] When any person under twenty one years of age is found guilty of having committed an offence punishable with imprisonment [but not with imprisonment for life], the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it should not be desirable to deal with him under Section 3 or Section 4, and if the Court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

[2] Of the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in subsection [1] the Court shall call for a report from the probations officer and consider the report, if any, any other information available to it relating to the character and physical and mental condition of the offender."

#. It is therefore clear from plain reading of the said provision that in case where the convict is under twenty one years of age, the Court which finds him guilty, shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of offence and character of the offender, it should not be desirable to deal with him under Section 3 or Section 4 of the said Act and for that purpose, if a sentence of imprisonment is passed on such offender, the Court has to record the reasons thereof. Differently put, it is mandatory for the Court to grant benefit of provisions of Probation of Offender Act, if the convict is under twenty one years of age and only in exceptional cases where nature of offence and character of the offender is such, that after recording the reasons thereof, a sentence of imprisonment has to be passed. In the instant case, it is seen that in the judgment of the trial court, provisions of Section 6 of the said Act have not been considered by the trial court and question of

grant of benefit of provisions of Probation Offender Act has also not been considered. It is also evident that the accused - convict persons have no criminal antecedents. The incident is an outcome or reaction of the previous incident. Considering the age of the appellants at the time of incident, they had hardly attained majority and even at the time of conviction, they were under 21 years. Keeping all these factors in mind, in absence of any specific reasons for non grant of benefit of probation, consideration that conviction is under Section 304, this Court is inclined to grant benefit of provisions of Section 4 of the Probation of Offender Act while confirming the conviction.

#. In view of above discussion, both these appeals are allowed. The conviction recorded by the Additional City Sessions Judge, Ahmedabad in Sessions Case No.300 / 2000 is hereby confirmed. The sentence is also confirmed but instead of sentencing the appellants to undergo imprisonment, the appellants shall be released on their executing personal bond in the amount of Rs.1,000/- each for keeping good conduct with a surety of like amount for a period of one year. The appellants shall remain under supervision of the Chief Probation Officer, Ahmedabad during the said period and shall appear before the Chief Probation Officer on 1st Sunday of every English Calender month during said period.

Date : 9-10-2002 [A.L.Dave, J.]

#kailash#